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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

No. 653

THE UNITED STATES OF AMERICA, APPELLANT

vs.

JOHN G. DARBY, APPELLEE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND

FILED FEBRUARY 1, 1933

(37350)

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1 [Caption omitted.]

2, 3 In United States District Court, District of Maryland

UNITED STATES OF AMERICA
vs.
JOHN G. DARBY

Indictment

Filed Oct. 20, 1932

The grand jurors of the United States of America in and for the District of Maryland, inquiring for the body of said district, do on their oath present that during the time of the commission of the offense hereinafter set forth, John G. Darby was the assistant cashier of the Montgomery County National Bank of Rockville, Maryland, a body corporate, which said national bank had theretofore been organized and was then and there existing under the laws of the United States of America and doing business at Rockville, in the said State and district, and was then and there a member of the Federal Reserve Bank of Richmond, Virginia, and a member bank within the meaning of the Federal reserve act (U. S. C. A., title 12, section 221); and the said John G. Darby, by virtue of his official relation as such assistant cashier of the said national bank, and by virtue of the power of control, direction and management which he possessed, heretofore, to wit, on the 26th day of January, 1931, at Rockville, feloniously, knowingly, and wilfully, and with intent then and there to injure and defraud the said national bank did make and cause and procure to be made in a certain book then and there belonging to and in use by the said national bank in transacting its said banking business, and then and there
4 designated and known as the Discount Register, Volume No. —, at Register No. 53006, a certain entry, which said entry was as follows:

Bessie D. Darby ren
Rockville, Md.

which said entry aforesaid, made in said book, was then and there false in that it purported to show that a note on which J. G. Darby appeared as maker, dated January 20, 1931, in the sum of $419.15 due on March 20, 1931, which had then been accepted by the said national bank for discount, and which was then in the possession of the said national bank, was also signed by the said Bessie D. Darby, of Rockville, Maryland, as maker, whereas in fact, as he, the said John G. Darby then well knew, the said note had not been executed by the said Bessie D. Darby as maker as aforesaid, and the said signature purporting to be the signature of the said Bessie D. Darby on the said note was a forgery; and the grand jurors further find that the said entry as aforesaid was unjustified, unwarranted, and false,

contrary to the form of the statute in such case made and provided; and against the peace, Government, and dignity of the United States of America.

U. S. C. A., title 12, sec. 592.

5 Second Count

And the grand jurors aforesaid, upon their oath aforesaid, do further present that during the time of the commission of the offense hereinafter set forth, John G. Darby, was the assistant cashier of the Montgomery County National Bank, of Rockville, Maryland, a body corporate, which said national bank had theretofore been organized and was then and there existing under the laws of the United States of America and doing business at Rockville, in the said State and district, and was then and there a member of the Federal Reserve Bank of Richmond, Virginia, and a member bank within the meaning of the Federal reserve act (U. S. C. A., title 12, section 221); and the said John G. Darby, by virtue of his official relation as such assistant cashier of the said national bank, and by virtue of the power of control, direction, and management which he possessed therein, heretofore, to wit, on the 26th day of January, 1931, at Rockville, feloniously, knowingly, and wilfully, and with intent then and there to deceive the officers of the said national bank, and the Comptroller of the Currency, and the agents and examiners lawfully appointed in accordance with the provisions of the Federal reserve act to examine the affairs of said member bank, did make and cause and procure to be made in a certain book then and there belonging to and in use by the said national bank in transacting its said banking business, and then and there designated and known as the Discount Register, Volume No. —, at Register No. 53006, a certain entry, which said entry was as follows:

6 Bessie D. Darby ren
Rockville, Md.

which said entry aforesaid, made in said book, was then and there false in that it purported to show that a note on which J. G. Darby appeared as maker, dated January 20, 1931, in the sum of $419.15 due on March 20, 1931, which had been accepted by the said national bank for discount, and which was then in the possession of the said national bank, was also signed by the said Bessie D. Darby, of Rockville, Maryland, as maker, whereas in fact, as he, the said John G. Darby then well knew, the said note was not executed by the said Bessie D. Darby as maker as aforesaid, and the said signature purporting to be the signature of the said Bessie D. Darby on the said note was a forgery; and the grand jurors further find that the said entry as aforesaid was unjustified, unwarranted, and false, contrary to the form of the statute in such case made and provided, and against the peace, Government, and dignity of the United States of America.

U. S. C. A., title 12, sec. 592.

7 Third Count

And the grand jurors aforesaid, upon their oath aforesaid, do further present that during the time of the commission of the offense hereinafter set forth, John G. Darby was the assistant cashier of the Montgomery County National Bank of Rockville, Maryland, a body corporate, which said national bank had theretofore been organized and was then and there existing under the laws of the United States of America and doing business at Rockville, in the said State and district, and was then and there a member of the Federal Reserve Bank of Richmond, Virginia, and a member bank within the meaning of the Federal reserve act (U. S. C. A., title 12, section 221); and the said John G. Darby, by virtue of his official relation as such assistant cashier of the said national bank, and by virtue of the power of control, direction, and management which he possessed, heretofore, to wit, on the 27th day of January, 1931, at Rockville, feloniously, knowingly, and wilfully, and with intent then and there to injure and defraud the said national bank, did make and cause and procure to be made in a certain book then and there belonging to and in use by the said national bank in transacting its said banking business, and then and there designated and known as the Discount Register, volume No. —, at Register No. 53043, a certain entry, which said entry was as follows:

B. D. Darby, ren

8 which said entry aforesaid, made in said book, was then and there false in that it purported to show that a note on which J. G. Darby appeared as maker, dated January 23, 1931, in the sum of $3,151.20, due on March 23, 1931, which had been accepted by the said national bank for discount, and which was then in the possession of the said national bank, was signed by the said B. D. Darby as maker, or endorser, whereas in fact, as he, the said John G. Darby then well knew, the said note had not been executed by the said B. D. Darby, and the said signature purporting to be the signature of the said B. D. Darby on the said note was a forgery; and the grand jurors further find that the said entry as aforesaid was unjustified, unwarranted, and false, contrary to the form of the statute in such case made and provided, and against the peace, Government, and dignity of the United States of America.

U. S. C. A., title 12, sec. 592.

9 Fourth Count

And the grand jurors aforesaid, upon their oath aforesaid, do further present that during the time of the commission of the offense hereinafter set forth, John G. Darby was the assistant cashier of the Montgomery County National Bank of Rockville, Maryland, a body corporate, which said national bank had theretofore been organized and was then and there existing under the laws of the

United States of America and doing business at Rockville, in the said State and district, and was then and there a member of the Federal Reserve Bank of Richmond, Virginia, and a member bank within the meaning of the Federal reserve act (U. S. C. A., title 12, section 221); and the said John G. Darby, by virtue of his official relation as such assistant cashier of the said national bank, and by virtue of the power of control, direction, and management which he possessed therein, heretofore, to wit, on the 27th day of January, 1931, at Rockville, feloniously, knowingly, and wilfully, and with intent then and there to deceive the officers of the said national bank, and the Comptroller of the Currency, and the agents and examiners lawfully appointed in accordance with the provisions of the Federal reserve act to examine the affairs of said member bank, did make and cause and procure to be made in a certain book then and there belonging to and in use by the said national bank in transacting its said banking business, and then and there designated and known as the Discount Register, Volume No. —, at Register No. 53043, a certain entry, which said entry was as follows:

B. D. Darby, ren

10 which said entry aforesaid, made in said book, was then and there false in that it purported to show that a note on which J. G. Darby appeared as maker, dated January 23, 1931, in the sum of $3,151.20, due on March 23, 1931, which had been accepted by the said national bank for discount, and which was then in the possession of the said national bank, was signed by the said B. D. Darby as maker, or endorser, whereas in fact, as he, the said John G. Darby then well knew, the said note was not executed by the said B. D. Darby, and the said signature purporting to be the signature of the said B. D. Darby on the said note was a forgery; and the grand jurors further find that the said entry as aforesaid was unjustified, unwarranted, and false, contrary to the form of the statute in such case made and provided, and against the peace, Government, and dignity of the United States of America.

U. S. C. A., title 12, sec. 592.

11 Fifth Count

And the grand jurors aforesaid, upon their oath aforesaid, do further present that during the time of the commission of the offense hereinafter set forth, John G. Darby was the assistant cashier of the Montgomery County National Bank of Rockville, Maryland, a body corporate, which said national bank had theretofore been organized and was then and there existing under the laws of the United States of America and doing business at Rockville, in the said State and district, and was then and there a member of the Federal Reserve Bank of Richmond, Virginia, and a member bank within the meaning of the Federal reserve act (U. S. C. A., title 12, section 221); and the said John G. Darby, by virtue of his official

relation as such assistant cashier of the said national bank, and by virtue of the power of control, direction, and management which he possessed, heretofore, to wit, on the 28th day of January, 1931, at Rockville, feloniously, knowingly, and wilfully, and with intent then and there to injure and defraud the said national bank, did make and cause and procure to be made in a certain book then and there belonging to and in use by the said national bank in transacting its said banking business, and then and there designated and known as the Discount Register, Volume No. —, at Register No. 53078, a certain entry, which said entry was as follows:

B. D. Darby ren

which said entry aforesaid, made in said book, was then and there false in that it purported to show that a note on which
12 J. G. Darby appeared as maker, in the sum of $1,396.83, due on March 24, 1931, which had been accepted by the said national bank for discount, and which was then in the possession of the said national bank, was signed by the said B. D. Darby as maker, or endorser, whereas in fact, as he, the said John G. Darby then well knew, the said note had not been executed by the said B. D. Darby, and the said signature purporting to be the signature of the said B. D. Darby on the said note was a forgery; and the grand jurors further find that the said entry as aforesaid was unjustified, unwarranted, and false, contrary to the form of the statute in such case made and provided, and against the peace, Government, and dignity of the United States of America.

U. S. C. A., title 12, sec. 592.

13 Sixth Count

And the grand jurors aforesaid, upon their oath aforesaid, do further present that during the time of the commission of the offense hereinafter set forth, John G. Darby was the assistant cashier of the Montgomery County National Bank of Rockville, Maryland, a body corporate, which said national bank had theretofore been organized and was then and there existing under the laws of the United States of America and doing business at Rockville, in the said State and district, and was then and there a member of the Federal Reserve Bank of Richmond, Virginia, and a member bank within the meaning of the Federal reserve act (U. S. C. A., title 12, section 221); and the said John G. Darby, by virtue of his official relation as such assistant cashier of the said national bank, and by virtue of the power of control, direction, and management which he possessed therein, heretofore, to wit, on the 28th day of January, 1931, at Rockville, feloniously, knowingly, and wilfully, and with intent then and there to deceive the officers of the said national bank, and the Comptroller of the Currency, and the agents and examiners lawfully appointed in accordance with the provisions of the Federal reserve act to examine the affairs of said member bank, did make

and cause to procure to be made in a certain book then and there belonging to and in use by the said national bank in transacting its said banking business, and then and there designated and known as the Discount Register, Volume No. —, at Register No. 53079, a certain entry, which said entry was as follows:

B. D. Darby ren

14 which said entry aforesaid, made in said book, was then and there false in that it purported to show that a note on which J. G. Darby appeared as maker, in the sum of $1,396.83, due on March 24, 1931, which had been accepted by the said national bank for discount, and which was then in the possession of the said national bank, was signed by the said B. D. Darby as maker, or endorser, whereas in fact, as he, the said John G. Darby then well knew, the said note was not executed by the said B. D. Darby, and the said signature purporting to be the signature of the said B. D. Darby on the said note was a forgery; and the grand jurors further find that the said entry as aforesaid was unjustified, unwarranted, and false, contrary to the form of the statute in such case made and provided, and against the peace, Government, and dignity of the United States of America.

U. S. C. A., title 12, sec. 592.

15 Seventh Count

And the grand jurors aforesaid, upon their oath aforesaid, do further present that during the time of the commission of the offense hereinafter set forth, John G. Darby was the assistant cashier of the Montgomery County National Bank of Rockville, Maryland, a body corporate, which said national bank had theretofore been organized and was then and there existing under the laws of the United States of America and doing business at Rockville, in the said State and district, and was then and there a member of the Federal Reserve Bank of Richmond, Virginia, and a member bank within the meaning of the Federal reserve act (U. S. C. A., title 12, section 221); and the said John G. Darby, by virtue of his official relation as such assistant cashier of the said national bank, and by virtue of the power of control, direction, and management which he possessed, heretofore, to wit, on the 24th day of February, 1931, at Rockville, feloniously, knowingly, and wilfully, and with intent then and there to injure and defraud the said national bank, did make and cause and procure to be made in a certain book then and there belonging to and in use by the said national bank in transacting its said banking business, and then and there designated and known as the Discount, Register, Volume No. —, at Register No. 53603, a certain entry, which said entry was as follows:

B. D. Darby ren

which said entry aforesaid, made in said book, was then and there false in that it purported to show that a note on which J. G.

16 Darby appeared as maker, in the sum of $1,648.20, due on March 24, 1931, which had been accepted by the said national

bank for discount, and which was then in the possession of the said national bank, was signed by the said B. D. Darby as maker, or endorser, whereas in fact, as he, the said John G. Darby then well knew, the said note had not been executed by the said B. D. Darby, and the said signature purporting to be the signature of the said B. D. Darby on the said note was a forgery; and the grand jurors further find that the said entry as aforesaid was unjustified, unwarranted, and false, contrary to the form of the statute in such case made and provided, and against the peace, Government, and dignity of the United States of America.

U. S. C. A., title 12, sec. 592.

17 Eighth Count

And the grand jurors aforesaid, upon their oath aforesaid, do further present that during the time of the commission of the offense hereinafter set forth, John G. Darby was the assistant cashier of the Montgomery County National Bank of Rockville, Maryland, a body corporate, which said national bank had theretofore been organized and was then and there existing under the laws of the United States of America and doing business at Rockville, in the said State and district, and was then and there a member of the Federal Reserve Bank of Richmond, Virginia, and a member bank within the meaning of the Federal reserve act (U. S. C. A., title 12, section 221); and the said John G. Darby, by virtue of his official relation as such assistant cashier of the said national bank, and by virtue of the power of control, direction, and management which he possessed therein, heretofore, to wit, on the 24th day of February, 1931, at Rockville, feloniously, knowingly, and wilfully, and with intent then and there to deceive the officers of the said national bank, and the Comptroller of the Currency, and the agents and examiners lawfully appointed in accordance with the provisions of the Federal reserve act to examine the affairs of said member bank, did make and cause and procure to be made in a certain book then and there belonging to and in use by the said national bank in transacting its said banking business, and then and there designated and known as the Discount Register, Volume No. —, at Register No. 53603, a certain entry, which said entry was as follows:

B. D. Darby ren

18 which said entry aforesaid, made in said book, was then and there false in that it purported to show that a note on which J. G. Darby appeared as maker, in the sum of $1,648.20, due on March 24, 1931, which had been accepted by the said national bank for discount, and which was then in the possession of the said national bank, was signed by the said B. D. Darby as maker, or endorser, whereas in fact, as he, the said John G. Darby, then well knew, the said note was not executed by the said B. D. Darby, and

the said signature purporting to be the signature of the said B. D. Darby on the said note was a forgery; and the grand jurors further find that the said entry as aforesaid was unjustified, unwarranted, and false, contrary to the form of the statute in such case made and provided, and against the peace, Government, and dignity of the United States of America.

U. S. C. A., title 12, sec. 592.

19 Ninth Count

And the grand jurors aforesaid, upon their oath aforesaid, do further present that during the time of the commission of the offense hereinafter set forth, John G. Darby was the assistant cashier of the Montgomery County National Bank of Rockville, Maryland, a body corporate, which said national bank had theretofore been organized and was then and there existing under the laws of the United States of America and doing business at Rockville, in the said State and district, and was then and there a member of the Federal Reserve Bank of Richmond, Virginia, and a member bank within the meaning of the Federal reserve act (U. S. C. A., title 12, section 221); and the said John G. Darby, by virtue of his official relation as such assistant cashier of the said national bank, and by virtue of the power of control, direction, and management which he possessed, heretofore, to wit, on the 26th day of February, 1931, at Rockville, feloniously, knowingly, and wilfully, and with intent then and there to injure and defraud the said national bank, did make and cause and procure to be made in a certain book then and there belonging to and in use by the said national bank in transacting its said banking business, and then and there designated and known as the Discount Register, Volume No. —, at Register No. 53623, a certain entry, which said entry was as follows:

Bessie D. Darby,
Rockville, Md.

which said entry aforesaid, made in said book, was then and there false in that it purported to show that a note on which J. G. Darby appeared as maker, dated February 24, 1931, in the sum of
20 $979.87 due on March 26, 1931, which had then been accepted by the said national bank for discount, and which was then in the possession of the said national bank, was also signed by the said Bessie D. Darby, of Rockville, Maryland, as maker, whereas in fact, as he, the said John G. Darby, then well knew, the said note had not been executed by the said Bessie D. Darby as maker as aforesaid, and the said signature purporting to be the signature of the said Bessie D. Darby on the said note was a forgery; and the grand jurors further find that the said entry as aforesaid was unjustified, unwarranted, and false, contrary to the form of the statute in such case made and provided, and against the peace, Government, and dignity of the United States of America.

U. S. C. A., title 12, sec. 592.

21 Tenth Count

And the grand jurors aforesaid, upon their oath aforesaid, do further present that during the time of the commission of the offense hereinafter set forth, John G. Darby was the assistant cashier of the Montgomery County National Bank of Rockville, Maryland, a body corporate, which said national bank had theretofore been organized and was then and there existing under the laws of the United States of America and doing business at Rockville, in the said State and district, and was then and there a member of the Federal Reserve Bank of Richmond, Virginia, and a member bank within the meaning of the Federal reserve act (U. S. C. A., title 12, section 221); and the said John G. Darby, by virtue of his official relation as such assistant cashier of the said national bank, and by virtue of the power of control, direction, and management which he possessed therein, heretofore, to wit, on the 26th day of February, 1931, at Rockville, feloniously, knowingly, and wilfully, and with intent then and there to deceive the officers of the said national bank, and the Comptroller of the Currency, and the agents and examiners lawfully appointed in accordance with the provisions of the Federal reserve act to examine the affairs of said member bank, did make and cause and procure to be made in a certain book then and there belonging to and in use by the said national bank in transacting its said banking business, and then and there designated and known as the Discount Register, Volume No. —, at Register No. 53623, a certain entry, which said entry was as follows:

Bessie D. Darby,
Rockville, Md.

22 which said entry aforesaid, made in said book, was then and there false in that it purported to show that a note on which J. G. Darby appeared as maker, dated February 24, 1931, in the sum of $979.87 due on March 26, 1931, which had been accepted by the said national bank for discount, and which was then in the possession of the said national bank, was also signed by the said Bessie D. Darby of Rockville, Maryland, as maker, whereas in fact, as he, the said John G. Darby then well knew, the said note was not executed by the said Bessie D. Darby as maker as aforesaid, and the said signature purporting to be the signature of the said Bessie D. Darby on the said note was a forgery; and the grand jurors further find that the said entry as aforesaid was unjustified, unwarranted, and false, contrary to the form of the statute in such case made and provided, and against the peace, Government and dignity of the United States of America.

U. S. C. A., title 12, sec. 592.

23 Eleventh Count

And the grand jurors aforesaid, upon their oath aforesaid, do further present that during the time of the commission of the

offense hereinafter set forth, John G. Darby was the assistant cashier of the Montgomery County National Bank of Rockville, Maryland, a body corporate, which said national bank had theretofore been organized and was then and there existing under the laws of the United States of America and doing business at Rockville, in the said State and district, and was then and there a member of the Federal Reserve Bank of Richmond, Virginia, and a member bank within the meaning of the Federal reserve act (U. S. C. A., title 12, section 221); and the said John G. Darby, by virtue of his official relation as such assistant cashier of the said national bank, and by virtue of the power of control, direction, and management which he possessed, heretofore, to wit, on the 1st day of April, 1931, at Rockville, feloniously, knowingly, and wilfully, and with intent then and there to injure and defraud the said national bank, did make and cause and procure to be made in a certain book then and there belonging to and in use by the said national bank in transacting its said banking business, and then and there designated and known as the Discount Register, Volume No. —, at Register No. 54422, a certain entry, which said entry was as follows:

B. D. Darby ren

which said entry aforesaid, made in said book, was then and there false in that it purported to show that a note on which J. G.
24 Darby appeared as maker, dated March 15, 1931, in the sum of $3,160.72, due on April 15, 1931, which had been accepted by the said national bank for discount, and which was then in the possession of the said national bank, was signed by the said B. D. Darby as maker, or endorser, whereas in fact, as he, the said John G. Darby then well knew, the said note had not been executed by the said B. D. Darby, and the said signature purporting to be the signature of the said B. D. Darby on the said note was a forgery; and the grand jurors further find that the said entry as aforesaid was unjustified, unwarranted, and false, contrary to the form of the statute in such case made and provided, and against the peace, Government, and dignity of the United States of America.

U. S. C. A., title 12, sec. 592.

25 Twelfth Count

And the grand jurors aforesaid, upon their oath aforesaid, do further present that during the time of the commission of the offense hereinafter set forth, John G. Darby was the assistant cashier of the Montgomery County National Bank of Rockville, Maryland, a body corporate, which said national bank had theretofore been organized and was then and there existing under the laws of the United States of America and doing business at Rockville, in the said State and district, and was then and there a member of the Federal Reserve Bank of Richmond, Virginia, and a member bank within the meaning of the Federal reserve act (U. S. C. A., title 12, section 221); and the

said John G. Darby, by virtue of his official relation as such assistant cashier of the said national bank, and by virtue of the power of control, direction, and management which he possessed therein, heretofore, to wit, on the 1st day of April, 1931, at Rockville, feloniously, knowingly, and wilfully, and with intent then and there to deceive the officers of the said national bank, and the Comptroller of the Currency, and the agents and examiners lawfully appointed in accordance with the provisions of the Federal reserve act to examine the affairs of said member bank, did make and cause and procure to be made in a certain book then and there belonging to and in use by the said national bank in transacting its said banking business, and then and there designated and known as the Discount Register, Volume No. —, at Register No. 54422, a certain entry, which said entry was as follows:

B. D. Darby ren

26 which said entry aforesaid, made in said book, was then and there false in that it purported to show that a note on which J. G. Darby appeared as maker, dated March 15, 1931, in the sum of $3,160.72, due on April 15, 1931, which had been accepted by the said national bank for discount, and which was then in the possession of the said national bank, was signed by the said B. D. Darby as maker, or endorser, whereas in fact, as he, the said John G. Darby then well knew, the said note was not executed by the said B. D. Darby, and the said signature purporting to be the signature of the said B. D. Darby on the said note was a forgery; and the grand jurors further find that the said entry as aforesaid was unjustified, unwarranted, and false, contrary to the form of the statute in such case made and provided, and against the peace, Government, and dignity of the United States of America.

U. S. C. A., title 12, sec. 592.

27 Thirteenth Count

And the grand jurors aforesaid, upon their oath aforesaid, do further present that during the time of the commission of the offense hereinafter set forth, John G. Darby was the assistant cashier of the Montgomery County National Bank of Rockville, Maryland, a body corporate, which said national bank had theretofore been organized and was then and there existing under the laws of the United States of America and doing business at Rockville, in the said State and district, and was then and there a member of the Federal Reserve Bank of Richmond, Virginia, and a member bank within the meaning of the Federal reserve act (U. S. C. A., title 12, section 221); and the said John G. Darby, by virtue of his official relation as such assistant cashier of the said national bank, and by virtue of the power of control, direction, and management which he possessed, heretofore, to wit, on the 1st day of April, 1931, at Rockville, feloniously, knowingly, and wilfully, and with intent then

and there to injure and defraud the said national bank, did make and cause and procure to be made in a certain book then and there belonging to and in use by the said national bank, in transacting its said banking business, and then and there designated and known as the Discount Register, Volume No. —, at Register No. 54423, a certain entry, which said entry was as follows:

B. D. Darby ren

which said entry aforesaid, made in said book, was then and there false in that it purported to show that a note on which J. G.
28 Darby appeared as maker, dated March 16, 1931, in the sum of $585.80, due on May 16, 1931, which had been accepted by the said national bank for discount, and which was then in the possession of the said national bank, was signed by the said B. D. Darby as maker, or indorser, whereas in fact, as he, the said John G. Darby then well knew, the said note had not been executed by the said B. D. Darby, and the said signature purporting to be the signature of the said B. D. Darby on the said note was a forgery; and the grand jurors further find that the said entry as aforesaid was unjustified, unwarranted, and false, contrary to the form of the statute in such case made and provided, and against the peace, Government, and dignity of the United States of America.

U. S. C. A., title 12, sec. 592.

29 Fourteenth Count

And the grand jurors aforesaid, upon their oath aforesaid, do further present that during the time of the commission of the offense hereinafter set forth, John G. Darby was the assistant cashier of the Montgomery County National Bank of Rockville, Maryland, a body corporate, which said national bank had theretofore been organized and was then and there existing under the laws of the United States of America and doing business at Rockville, in the said State and district, and was then and there a member of the Federal Reserve Bank of Richmond, Virginia, and a member bank within the meaning of the Federal reserve act (U. S. C. A., title 12, section 221); and the said John G. Darby, by virtue of his official relation as such assistant cashier of the said national bank, and by virtue of the power of control, direction, and management which he possessed therein, heretofore, to wit, on the 1st day of April, 1931, at Rockville, feloniously, knowingly, and wilfully, and with intent then and there to deceive the officers of the said national bank, and the Comptroller of the Currency, and the agents and examiners lawfully appointed in accordance with the provisions of the Federal reserve act to examine the affairs of said member bank, did make and cause and procure to be made in a certain book then and there belonging to and in use by the said national bank in transacting its said banking business, and then and there designated and known as the Discount Register,

Volume No. —, at Register No. 54423, a certain entry, which said entry was as follows:

B. D. Darby ren

which said entry aforesaid, made in said book, was then and there false in that it purported to show that a note on which J. G.
30 Darby appeared as maker, dated March 16, 1931, in the sum of $585.80, due on May 16, 1931, which had been accepted by the said national bank for discount, and which was then in the possession of the said national bank, was signed by the said B. D. Darby as maker, or endorser, whereas in fact, as he, the said John G. Darby then well knew, the said note was not executed by the said B. D. Darby, and the said signature purporting to be the signature of the said B. D. Darby on the said note was a forgery; and the grand jurors further find that the said entry aforesaid was unjustified, unwarranted, and false, contrary to the form of the statute in such case made and provided, and against the peace, Government, and dignity of the United States of America.

U. S. C. A., title 12, sec. 592.

31 Fifteenth Count

And the grand jurors aforesaid, upon their oath aforesaid, do further present that during the time of the commission of the offense hereinafter set forth, John G. Darby was the assistant cashier of the Montgomery County National Bank of Rockville, Maryland, a body corporate, which said national bank had theretofore been organized and was then and there existing under the laws of the United States of America and doing business at Rockville, in the said State and district, and was then and there a member of the Federal Reserve Bank of Richmond, Virginia, and a member bank within the meaning of the Federal reserve act (U. S. C. A., title 12, section 221); and the said John G. Darby, by virtue of his official relation as such assistant cashier of the said national bank, and by virtue of the power of control, direction, and management which he possessed, heretofore, to wit, on the 18th day of March, 1931, at Rockville, feloniously, knowingly, and wilfully, and with intent then and there to injure and defraud the said national bank, did make and cause and procure to be made in a certain book then and there belonging to and in use by the said national bank in transacting its said banking business, and then and there designated and known as the Discount Register, Volume No. —, at Register No. 54075, a certain entry, which said entry was as follows:

Bessie D. Darby,
Rockville, Md.

which said entry aforesaid, made in said book, was then and there false in that it purported to show that a note on which J. G. Darby appeared as maker, dated March 17, 1931, in the sum of
32 $1,076.66, due on May 17, 1931, which had then been accepted by the said national bank for discount, and which was then

in the possession of the said national bank, was also signed by the said Bessie D. Darby, of Rockville, Maryland, as maker, whereas in fact, as he, the said John G. Darby, then well knew, the said note had not been executed by the said Bessie D. Darby as maker as aforesaid, and the said signature purporting to be the signature of the said Bessie D. Darby on the said note was a forgery; and the grand jurors further find that the said entry as aforesaid was unjustified, unwarranted, and false, contrary to the form of the statute in such case made and provided, and against the peace, Government, and dignity of the United States of America.

U. S. C. A., title 12, sec. 592.

33 Sixteenth Count

And the grand jurors aforesaid, upon their oath aforesaid, do further present that during the time of the commission of the offense hereinafter set forth, John G. Darby was the assistant cashier of the Montgomery County National Bank of Rockville, Maryland, a body corporate, which said national bank had theretofore been organized and was then and there existing under the laws of the United States of America and doing business at Rockville, in the said State and district, and was then and there a member of the Federal Reserve Bank of Richmond, Virginia, and a member bank within the meaning of the Federal reserve act (U. S. C. A., title 12, section 221); and the said John G. Darby, by virtue of his official relation as such assistant cashier of the said national bank, and by virtue of the power of control, direction, and management which he possessed therein, heretofore, to wit, on the 18th day of March, 1931, at Rockville, feloniously, knowingly, and wilfully, and with intent then and there to deceive the officers of the said national bank, and the comptroller of the currency, and the agents and examiners lawfully appointed in accordance with the provisions of the Federal reserve act to examine the affairs of said member bank, did make and cause and procure to be made in a certain book then and there belonging to and in use by the said national bank in transacting its said banking business, and then and there designated and known as the Discount Register, Volume No. —, at Register No. 54075, a certain entry, which said entry was as follows:

Bessie D. Darby,
Rockville, Md.

34 which said entry aforesaid, made in said book, was then and there false in that it purported to show that a note on which J. G. Darby appeared as maker, dated March 17, 1931, in the sum of $1,076.66, due on May 17, 1931, which had been accepted by the said national bank for discount, and which was then in the possession of the said national bank, was also signed by the said Bessie D. Darby, of Rockville, Maryland, as maker, whereas in fact, as he, the said John G. Darby then well knew, the said note was not executed by the said Bessie D. Darby as maker as aforesaid, and the said signature purporting to be the signature of the said Bessie D. Darby on the said note was a forgery; and the grand jurors further find

that the said entry as aforesaid was unjustified, unwarranted, and false, contrary to the form of the statute in such case made and provided, and against the peace, Government, and dignity of the United States of America.

SIMON E. SOBELOFF,
United States Attorney.

U. S. C. A., title 12, sec. 592.

The aforegoing indictment is thus endorsed:

"A true bill.

"E. STANLEY GARY, jr., *Foreman.*"

35 In United States District Court

[Title omitted.]

Demurrer to indictment

Filed Nov. 28, 1932

Now comes the defendant, John G. Darby, by his attorney, and says that the indictment against him in the above-entitled cause is bad substance as to each and every count thereof.

LUCIEN H. MERCIER,
Attorney for Defendant.

NOTE.—Among the points to be argued are:

(a) Each and every count admits that the paper which is alleged to form the basis of the false entry was actually discounted by, and was actually in the possession of the bank—

(1) There can be no false entry where the entry as entered represents an actual transaction of the bank.

(2) It can make no difference whether the defendant knew the note to be forged or not, if the note entered into an actual transaction of the bank.

(3) The entry merely represents that such a transaction was entered into—and does not declare or represent that the paper forming the basis of the entry was good.

(b) The bank having actually discounted the paper, as the indictment charges, it became the duty of the defendant to record the transaction—it would have constituted a false entry not to so record it.

LUCIEN H. MERCIER,
Attorney for Defendant.

36 In United States District Court for the District of Maryland

Criminal #16666

UNITED STATES OF AMERICA

vs.

JOHN G. DARBY

Opinion

Filed Dec. 7, 1932

COLEMAN, District Judge:

The single question before the court is whether the following allegations as set forth in the indictment of the defendant, John G. Darby, assistant cashier of the Montgomery County National Bank of Rockville, Maryland, are sufficient to meet the requirements of the statute defining the crime of false entry by officers, employees, etc., of national banks. (12 U. S. C. A., sec. 592.) There are sixteen counts in the indictment, all of which charge substantially the same offense, but with respect to different promissory notes. Therefore, suffice it to quote the following from the first count: "* * * the said John G. Darby, by virtue of his official relation as such assistant cashier of the said national bank, and by virtue of the power of control, direction, and management which he possessed, heretofore, to wit, on the 28th day of January, 1931, at Rockville, feloniously, knowingly, and willfully, and with intent then and there to injure and defraud the said national bank, did make and cause and procure to be made in a certain book then and there belonging to and in use by the said national bank in transacting its said banking business, and then and there designated and known as the Discount Register, Volume No. —, at Register No. 53006, a certain entry, which said entry was as follows:

"Bessie D. Darby, ren
"Rockville, Md.

"which said entry aforesaid, made in said book, was then and there false in that it purported to show that a note on which J. G. Darby appeared as maker, dated January 20, 1931, in the sum of $419.15 due on March 20, 1931, which had then been accepted by the said national bank for discount, and which was then in the possession of the said national bank, was also signed by the said Bessie D. Darby, of Rockville, Maryland, as maker, whereas in fact, as he, the said John G. Darby then well knew, the said note had not been executed by the said Bessie D. Darby as maker as aforesaid, and
37 the said signature purporting to be the signature of the said Bessie D. Darby on the said note was a forgery."

The defendant has demurred to the indictment. It must be assumed from the allegations of the indictment as above set forth,

and from the absence of anything to the contrary appearing in the indictment, that the promissory notes in question came properly into the possession of the bank through discount transactions made in the regular course of business, and that the defendant, acting in his capacity as assistant cashier, listed the notes as part of the bank's assets. The Government claims that such a listing made with knowledge that one of the signatures on the note was a forgery, amounted to a false entry within the meaning of the statute, the pertinent provisions of which are as follows: "Any officer, director, agent, or employee of any Federal reserve bank, or of any member bank as defined in sections 221 to 225 of this title, who embezzles, abstracts, or willfully misapplies any of the moneys, funds, or creditors of such Federal reserve bank or member bank, or who without authority from the directors of such Federal reserve bank or member bank, issues or puts in circulation any of the notes of such Federal reserve bank or member bank, or who, without such authority, issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, mortgage, judgment, or decree, or who makes any false entry in any book, report, or statement of such Federal reserve bank or member bank, with intent in any case to injury or defraud such Federal reserve bank or member bank, or any other company, body politic or corporate, or any individual person, or to deceive any officer of such Federal reserve bank or member bank, or the Comptroller of the Currency, or any agent or examiner appointed to examine the affairs of such Federal reserve bank or member banks, or the Federal Reserve Board; and every receiver of a national banking association who, with like intent to defraud or injure, embezzles, abstracts, purloins, or willfully misapplies any of the moneys, funds, or assets of his trust, and every person who, with like intent, aids or abets any officer, director, agent, employee, or receiver in any violation of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof in any district court of the United States shall be fined not more than $5,000 or shall be imprisoned for not more than five years, or both, in the discretion of the court." (12 U. S. C. A., sec. 592.)

38 It will be seen that the statute covers numerous separate offenses, namely, embezzlement, abstraction, or misapplication of funds; unauthorized issuance of certificates of deposit or other documents, and lastly, making false entries. We see no escape from the conclusion that defendant's demurrer must be sustained on the authority of Coffin vs. United States, 156 U. S. 532; 162 U. S. 664; Agnew vs. United States, 165 U. S. 36, and Cooper vs. United States, 13 F. (2d) 16, the latter a decision of the Circuit Court of Appeals for this circuit, because the principle laid down in those cases is believed to be directly applicable to the facts in the present case. While, from aught that appears from the allegations of the indictment, what defendant did amounted to misapplication of funds, he

is not charged with this, but solely with the making of false entries which is a separate, concrete offense, and, if we properly interpret the aforegoing decisions, is not committed where, as here, the transactions of which he made entries actually occurred and were entered exactly as they occurred.

In the Coffin case, supra, the Supreme Court reversed a conviction for false entry, finding that the lower court had erred in charging the jury in effect that ". . . if the transaction represented by the entry actually occurred, but amounted to a misapplication, then its entry exactly as it occurred constituted a 'false entry.'" 156 U. S. 342, 463. The facts were that the defendant, acting as an officer of a national bank, received the bill of exchange of a depositor and credited it with that amount, allowing it to draw checks against such credit. Thereupon, although he knew the bill to be worthless and made no effort to collect it, he entered it upon the books of the bank as an asset. Mr. Justice White, in the course of his opinion, said, page 463: "Whilst we consider the charges asked were in some respects unsound, yet the exception reserved to the charge actually given by the court was well taken, because therein the questions of misapplication and of false entries are interblended in such a way that it is difficult to understand exactly what was intended. We think the language used must have tended to confuse the jury and leave upon their minds the impression that if the transaction represented by the entry actually occurred, but amounted to a misapplication, then its entry exactly as it occurred constituted "a false entry;" in other words, that an entry would be false, though
39 it faithfully described an actual occurrence, unless the transaction which it represented involved full and fair value for the bank. The thought thus conveyed implied that the truthful entry of a fraudulent transaction constitutes a false entry within the meaning of the statute. We think it is clear that the making of a false entry is a concrete offense which is not committed where the transaction entered actually took place, and is entered exactly as it occurred."

To the same effect, upon similar state of facts, are Agnew *vs.* United States and Cooper *vs.* United States, supra. Nevertheless, the Government attempts to distinguish these cases from the present case on the ground that no forgery existed in those cases, but merely known insolvency of the persons whose true signatures appeared on the paper. While, to be sure, this is a factual difference, we do not believe that it permits of a different result when the language and intent of the statute are correctly applied. Such a refinement in the definition of the term "false entry" is not permissible. The word "false" denotes some thing that is not genuine or real; artificial; counterfeit. An "entry" is defined as the "act of making or entering a record; a setting down in writing of particulars, as of a transaction; as an entry of a sale; also that which is entered; an item." (Webster's International Dictionary.) It is argued that when an entry is made of the note of an insolvent, every thing represented

as true is true; that the bank possessed such a note which is, in fact, signed by the person whose signature appears on the note; that whereas, on the other hand, when an entry is made of a forged note, the representation is untrue; that the bank does not possess a note signed by the person whose name appears thereon. But the weakness of this narrow distinction is that the bank's employees is not charged with representation beyond existence of the actual document which he copies. As has already been pointed out, the act seeks to punish offenses of various and distinct kinds, of which the making of false entries is merely one. We do not believe that Congress intended this last of a series of offenses to be so broad as to include the others. The crime of "false entry" must have been treated as a separate crime, through punishment for which at least one main purpose was to reach bank officials or employees guilty of padding their accounts with the purpose of deceiving their fellow officers or employees, and bank examiners, by making entries of transactions which in fact never occurred—acts which in themselves and without more, would not otherwise have been criminal.

The records of the bank are not intended to furnish the history or the origin of the paper actually passing through the bank, whether received in good or bad faith, whether valuable or worthless for whatever reason. In the Coffin case, supra, the Supreme Court said "that the truthful entry of a fraudulent transaction" does not constitute a false entry within the meaning the statute. Thus, unless we can say that in the present case there was in fact no transaction to which the bank was a party, there can be no sound distinction on principle between the truthful entry of a transaction, fraudulent because the evidence of indebtedness was accepted when known to be worthless, and one fraudulent, because the evidence of indebtedness was known to contain a forged signature. Clearly, there was a "transaction" in the present case because, as alleged in the indictment, the note was accepted and discounted by the bank and contained in addition to the forged signature, the name of the defendant, a valid signature from aught that appears. See also Dow vs. United States, 82 Fed. 904; United States vs. Young, 128 Fed. 111; Twining vs. United States, 141 Fed. 41.

Whether for one reason or another, as a result of the conclusion here reached, it may not be possible to bring the alleged unlawful conduct of the defendant within the language of one or more of the other provisions of the statute, is a matter with which we are not here concerned. The sole problem presented is one of construction. It is not the function of the court to strain the language of a statute unless there is clear justification for so doing, regardless of the practical arguments that may be advanced therefor.

Accordingly, the demurrer will be sustained.

WILLIAM C. COLEMAN.

41 In United States District Court for the District of Maryland

Criminal No. 16666

UNITED STATES OF AMERICA

vs.

JOHN G. DARBY

Order sustaining demurrer and quashing indictment

Filed Dec. 7, 1932

Upon consideration of the demurrer to the indictment in this cause, and upon consideration of the arguments thereon, it is, by the court, this 7th day of December, A. D. 1932.

Ordered, that the demurrer be, and the same is, hereby sustained; and

It is further ordered, that the indictment heretofore returned herein against the above-named defendant be, and the same is, hereby quashed.

WILLIAM C. COLEMAN,
United States District Judge.

42 In United States District Court

[Title omitted.]

Certificate of court

Filed Dec. 8, 1932

I hereby certify that the decision in the above case is based on my construction of U. S. C. A., title 12, section 592.

WILLIAM C. COLEMAN,
United States District Judge.

DECEMBER 5TH, 1932.

43 In United States District Court

[Title omitted.]

Petition for appeal and order allowing same

Filed Dec. 31, 1932

Comes now the United States of America, plaintiff in the above-entitled cause, by Simon E. Sobeloff, United States Attorney in and for the District of Maryland, and conceiving itself aggrieved by the

order entered in this cause on December 7, 1932, sustaining a demurrer to the indictment, prays that an appeal may be allowed from said order to the Supreme Court of the United States, and in connection with this petition the United States presents herewith its assignment of errors and statement of jurisdiction.

Dated December 31st, 1932.

UNITED STATES OF AMERICA,
By its attorney,
SIMON E. SOBELOFF,
United States Attorney.

Appeal allowed this 31st day of December, 1932.

WILLIAM C. COLEMAN,
United States District Judge.

43a [Citation in usual form showing service on Lucien H. Mercier omitted in printing.]

44 In United States District Court

[Title omitted.]

Assignment of errors

Filed Dec. 31, 1932

Comes now the United States of America, by Simon E. Sobeloff, United States attorney in and for the District of Maryland, and in connection with its appeal makes the following assignment of errors:

1. The District Court erred in sustaining the demurrer to the indictment.

2. The District Court erred in holding that the transactions covered by this indictment were entered exactly as they occurred.

3. The District Court erred in holding that an entry in the discount register of the name of a comaker or endorser which was forged on a note was not a false entry within the meaning of section 5209 of the Revised Statutes as amended.

Dated December 31, 1932.

THE UNITED STATES OF AMERICA,
By its attorney,
SIMON E. SOBELOFF,
United States Attorney.

[45–52 omitted.]

53 In United States District Court

[Title omitted.]

Præcipe for transcript of record.

Filed Jan. 4, 1933

Mr. CLERK:

In making up the record for the appeal to the United States Supreme Court in the above case, please include the following documents:

Indictment.
Demurrer.
Opinion of court.
Order of court sustaining demurrer.
Certificate of court.
Petition for appeal.
Order of court allowing same.
Assignment of errors.
Statement of jurisdiction.
Notice and proof of service of papers.
This præcipe.
Memorandum of clerk.
Order to transmit record.
Copy of docket entries.
Clerk's certificate.
Dated December 31, 1932.

SIMON E. SOBELOFF,
United States Attorney.

Service of copy admitted this 3rd day of January, 1933.

LUCIEN H. MERCIER,
Counsel for Appellee.

The appellee will not require additional portions of the record to be inserted in the transcript.

LUCIEN H. MERCIER,
Counsel for Appellee.

54 In United States District Court

[Title omitted.]

Docket entries

1932

Oct. 20. Indictment for Vio. National Banking Law, U. S. C. A., title 12, section 592, filed.
" " Bench warrant issued. (Not found in Dist. Md., Oct. 21, 1932.)
" 27. Transcript of proceedings before U. S. Comr., District of Columbia, filed.

Nov. 28. Demurrer, filed. (Service admitted.)
Dec. 7. Opinion of court filed.
" 8. Certificate of Judge in re: Decision herein, filed.
" 7. Order of court sustaining demurrer and quashing indictment, filed.
" 31. Petition of United States of America and order of court allowing appeal, filed.
" " Assignment of errors, filed.
" " Statement of jurisdiction with letter of notice, filed.
1933
Jan. 4. Instructions to clerk for making up record on appeal, filed.
" " Citation issued retble within forty days. (Service acknowledged 9 Jany, 1933.)
" 14. Statement in opposition to jurisdiction filed.
" " Motion to dismiss or affirm appeal, filed.

55 In United States District Court

Order to transmit record

And, thereupon, it is ordered by the court here, that a transcript of the record and proceedings of the cause aforesaid, together with all things thereunto relating, be transmitted to the said Supreme Court of the United States, and the same is transmitted accordingly.

Teste:

ARTHUR L. SPAMER, *Clerk.*

[Clerk's certificate to foregoing transcript omitted in printing.]

56 In Supreme Court of the United States

Statement of points upon which appellant will rely, and designation of entire record for printing

Filed Feb. 10, 1933

STATEMENT

Pursuant to rule 13 of this court, appellant specifies the following as the points upon which it intends to rely in the above-entitled cause:

1. An entry in the books of a bank which, in a material part, falsely and untruly represents an actual and existing transaction is a false entry.

2. When such entry is knowingly and purposely made, with intent to deceive or defraud, it constitutes a false entry within the meaning of section 5209, Revised Statutes, as amended.

3. When the entry of the details of a note in the discount register of a bank includes the transcription into that register of a
57 forged signature of a comaker or endorser, and the officer making or causing such entry to be made knows that such signature is forged, such officer is guilty of the offense denounced by the statute.

The entire record as filed should be printed.

THOMAS D. THACHER,
Solicitor General.

FEBRUARY, 1933.

[File endorsement omitted.]

[Indorsement on cover:] Enter, Attorney General. File No. 37350. Maryland, D. C. U. S. Term No. 653. The United States of America, appellant, vs. John G. Darby. Filed February 1, 1933. File No. 37350.

U. S. GOVERNMENT PRINTING OFFICE: 1933